

REMARKS

This amendment is responsive to the Office Action dated July 18, 2003. Applicants have amended claims 1, 5, 10, 12, 13, 14, 15, 16, 19, 22, 23 and 24. Claims 38, 42, 52, 55 and 58 have been withdrawn, and claims 18, 26-37, 39-41, 43-51, 53-54, 56-57 and 59-60 have been canceled. Claims 1-17, 19-25 and 61 are pending.

Drawings and Specification

In the Office Action, the Examiner objected to the drawings because figures 1A-1K are photographs.

Also, the Examiner objected to the drawings because figures 1L and 2-5 contain extraneous matter which is not permitted, in particular, descriptive wording.

Applicants have submitted some of the photographic figures as line drawings. The drawings have been corrected to substitute reference numerals for descriptive wording. In particular, the photographs submitted as FIGS. 1A, 1B, 1F, 1G, 1H and 1J have been deleted. The photographs submitted as FIGS. 1C, 1D, 1E, 1I and 1K have been converted to line drawings and are now designated respectively as FIGS. 1, 2, 3, 4, 5 and 6 (including FIGS. 6A, 6B and 6C). Consequently, conceptual drawing submitted as FIGS. 2- 5 are now designated respectively as FIGS 7-10.

The Examiner objected to the specification under 37 § CFR 1.71, because the application lacks a proper written description. According to the Examiner, the written description should employ reference numerals. FIGS. 1-6 (formerly FIGS. 1C, 1D, 1E, 1I and 1K) show the physical features of the invention. Reference numerals have been added to the figures, and corresponding reference numerals have been added to the specification.

In the event a figure has been deleted, the specification has been modified to refer to the same feature in a different figure or to describe the feature without saying that the feature is depicted in a figure. Some typographical errors have been corrected. No new matter has been added.

Double brackets have been used when strikethroughs would be difficult to see.

Abstract

In the Office Action, the Examiner objected to the abstract because it compares the invention with the prior art and also included "means" and "said." The Applicants have amended the Abstract to address these concerns.

Claim Objections

In the Office Action, the Examiner objected to claim 18 under 37 § CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 18 has been canceled.

Claim Rejection Under 35 U.S.C. § 101

In the Office Action, the Examiner rejected claims 5-6, 10, 11, 13-16, and 22-24 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. The Applicants have amended claims 5, 10, 13-16 and 22-24 to recite features of the connective tissue distraction device, without including a human being as an element of the claimed device.

Claim Rejection Under 35 U.S.C. § 112

In the Office Action, the Examiner rejected claims 19-21 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Applicant has amended claim 19 for purposes of clarification, taking language from paragraph [0065] of the published application or page 18, lines 4-5 of the application as filed. Applicant submits that with the amendment to claim 19, claims 19-21 particularly point out and distinctly claim the subject matter, as required by 35 U.S.C. § 112, second paragraph.

Claim Rejection Under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 1-4, 7-9, 12 and 25 under 35 U.S.C. § 102(b) as being clearly anticipated by Seldin (U.S. Pat. No. 5,672,177). Applicant respectfully traverses the rejection to the extent such rejection may be considered applicable to the amended claims. Seldin fails to disclose each and every feature of the claimed invention, as required by

35 U.S.C. § 102(b), and provides no teaching that would have suggested the desirability of modification to include such features.

For example, Seldin fails to teach or suggest an expansion means that exerts force distracting the first transmitting means from the second transmitting means, with the expansion means being an element distinct from the first transmitting means and the second transmitting means. Claim 1, as amended, explicitly recites that the expansion means is configured to engage the first transmitting means and the second transmitting means, and further that the expansion means is configured to be disengaged from the first transmitting means and the second transmitting means.

The Examiner concluded that the Seldin ratchet arm 44 corresponded to an expansion means, and the Seldin second plate 14 corresponded to one of the transmitting means. The Seldin ratchet arm 44 is an integral part of second plate 14: "The second plate 14 further includes at least one resilient, elongated ratchet arm 44." Col. 3, lines 46-47.

The Examiner observed that the Seldin ratchet arm 44 is not an integral part of the first plate 12. The ratchet arm 44 is an integral part of the second plate 14, however, and the ratchet arm cannot be disengaged from the second plate. Claim 1, as amended, recites that the expansion means is a distinct element that can engage and disengage from the first transmitting means and the second transmitting means.

Claims 2-4, 7-9, 12 and 25 depend, directly or indirectly, upon claim 1. Applicants respectfully request that the rejection of these claims under 35 U.S.C. § 102(b) be withdrawn.

Claim Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1-4, 7-9, 12, 17, 18 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Robinson et al. (U.S. Pat. No. 5,364,396) in view of Seldin. Applicant respectfully traverses the rejection to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

The Examiner remarked that "Robinson discloses the invention essentially as claimed" except for the material used to make the components. As pertaining to claim 1 as amended, this

is not correct. Robinson does not disclose an expansion means that is configured to engage a first transmitting means and a second transmitting means, and an expansion means that is configured to be disengaged from the first transmitting means and the second transmitting means. On the contrary, Robinson discloses a drive rod 20 with cylindrically shaped collars 27 that are received by chamber bore 26 of first block 16. Col. 3, lines 42-53. Assuming that drive rod 20 corresponds to an expansion means and first block 16 corresponds to a transmission means, Robinson does not disclose or suggest drive rod 20 being configured to be disengaged from first block 16, as recited in Applicants' claim 1.

Claims 2-4, 7-9, 12, 17, 18 and 25 depend, directly or indirectly, upon claim 1. Applicants respectfully request that the rejection of these claims under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

9 January 2004
SHUMAKER & SIEFFERT, P.A.
8425 Seasons Parkway, Suite 105
St. Paul, Minnesota 55125
Telephone: 651.735.1100
Facsimile: 651.735.1102

By:

Daniel J. Hanson
Name: Daniel J. Hanson
Reg. No.: 46,757